



1 himself). Rather, Sam bought drugs from a variety of individuals for personal use and re-sale to  
2 friends and acquaintances.

3 Even the individuals who sold to Sam were not significant “players.” The government’s  
4 investigation identified five individuals who sold either ecstasy or methamphetamine to Sam Neys  
5 – Uriel Sotomayor, Jason Tang, Anthony Nguyen, Ilya Tuchinsky and Chris Calder, and one  
6 individual – Paul Ancajima – who sold to drugs to Calder (who in turn sometimes sold to Sam).  
7 All of those individuals were charged in the indictment in CR. 05-0491 VRW, and this Court has  
8 accepted pleas from all and sentenced all but Mr. Tang. Most were simply very young individuals,  
9 who made foolish choices, who pose no real threat to the community or public safety. This Court  
10 has sentenced them accordingly (a matter further address below).

11 Second, the informants who first came to the agents were found to be unreliable and not  
12 trustworthy (even if their own prior and ongoing criminal activities were not counted). They  
13 continued to engage in drug activities of their own. It appears that their allegations were largely an  
14 effort to get themselves out of trouble when each was arrested for other crimes.

15 Third, from the statements made by Sam on the telephone and from listening to his voice, it  
16 was clear that Sam was using these drugs regularly. He was often using and under the influence of  
17 drugs and spent most of his money to that end. It is telling that when Sam was arrested and all his  
18 possessions searched, he had no substantial assets in any form – indeed, hardly assets at all.

19 Then why was so much attention focused on Sam Neys? Simple, the agents placed the  
20 wiretap on his cellular telephone based on the exaggerated claims of two informants who even the  
21 agents later dismissed as untrustworthy and duplicitous. The agents overheard all of Sam’s  
22 conversations, and thus Sam was the center of the data they gathered. However, if the agents had  
23 eavesdropped on others named in the Indictment, especially those the government itself has  
24 identified as individuals who sold drugs to Sam Neys, it is certainly true that each of them would  
25 have looked to be the “most” significant. Yet, in truth, all of these defendants, including Sam -- as  
26 the government has admitted and the PSR recommends -- were “minor” players.  
27  
28

Further, while government agents overheard thousands and thousands of conversations over several months involving Sam Neys, the number of actual drug sales or purchases was relatively small. Almost all were charged in the Indictment. While Sam and others “talked” like big shots, little was accomplished other than talking.

As noted above, this Court has sentenced all but one of the codefendants who the government charged with selling drugs to Sam Neys (and who admitted doing so in their plea agreements) – he was the purchaser and user, not vice-versa. According to the summary at the outset of the PSR, this Court imposed the following sentences on those individuals:

- Mr. Ancajima (a supplier to Mr. Calder, who sold to Sam): 22 months prison;
- Mr. Calder: 24 months prison;
- Mr. Sotomayor: probation with 15 months community confinement;
- Mr. Tuchinsky: 24 months (with drug program recommended); and
- Mr. Nguyen: probation with 1 year community confinement

Each was sentenced in light of his distinct personal circumstances. Still, the fact that in each and every case this Court concluded that not more than two years in prison was sufficient punishment for the individuals who sold to Sam Neys the very drugs he was accused of using and re-selling to others provides important guidance in sentencing Sam Neys.

## **WHO IS SAM NEYS?**

The PSR accurately summarizes Sam’s short life prior to his incarceration in this case. He was born in Latvia to a Jewish family, who became refugees when he was just a boy. Though he became a stranger in a land very different from Riga, Latvia, Sam learned quickly and did well in school. His parents labored long hours to provide for their family, and Sam was their pride and joy. However, as he reached in his mid-teen years, he became involved with some other teenagers for whom drugs and “playing” were the dominant theme. Sam, unwisely, followed their lead. PSR para. 44-48, 52-54.

1 This portion of the PSR was understandably brief. A better way for this Court to see Sam  
2 Neys this is a young man very much worth a second chance is to consider the very expressive  
3 letters by friends and family attached to this Memorandum. Exhibit A. The authors describe a  
4 young man of good character and considerable achievement, personal and academic, and clearly  
5 still a young man of promise. They beseech this Court to act leniently in sentencing him.

6 The attached letters of reference – nearly 25 in all -- offer compelling insights into the  
7 young man this Court will sentence. The authors include men and women who have known Sam  
8 and his family all his life or have known Sam over the critical few years when his life took a  
9 dramatic turn for the worse. This is the story they tell:

10 Sam and his family grew up in Lativa, then a part of the Soviet Union. As Jews, their lot  
11 was not easy, and the Soviet Union did not practice or protect religious freedom. His parents were  
12 hard-working people, devoted to their family and especially their only child, Sam. He was raised  
13 in a strict but loving household, learning the virtues of devotion to family, hard-work and  
14 commitment to community.

15 Sam and his parents came to this country when he was a boy, seeking a better life and  
16 freedom from the harshness – religious and otherwise – of then-crumbling Soviet government and  
17 system. All the writers talk of Sam as a hard-working, loving child, who was supportive of others  
18 and in turn supported by them. He was a committed member of his faith, becoming a Bar Mitzvah  
19 on his 13<sup>th</sup> birthday. He did very well in school, earning himself a place in Lowell High School, a  
20 school with – as many noted – an outstanding reputation, but also very demanding standards. He  
21 excelled in tennis, offering to teach others the skills he learned and practiced on the tennis court  
22 (see e.g., Yelena Frid). As his long-time friend Simon Shuster wrote, as a young man Sam “had  
23 every charm and talent one can hope for in a kid. He was ambitious, clever, athletic and had the  
24 social grace to make a veritable fan club of the matchmaking moms in our neighborhood.”

25 Over and over again, the writers commented how caring and thoughtful Sam was to them  
26 or someone they knew (e.g., Veronica Golduber). They remarked on his quick intelligence, his  
27  
28

1 love of family, his good nature. Some commented on his willingness to defend and protect others  
2 who were weaker or more vulnerable (e.g., Mira Abramovich). And, for those reasons, because he  
3 was seemingly such a good and successful child, then a young man, none thought he could run  
4 afoul of their social standards, much less the law.

5 As high school progressed, Sam declined. He began using drugs, as an earlier generation  
6 of kids tried alcohol and later, marijuana. However, he became more and more deeply immersed  
7 in the drug culture, using more and different drugs. His grades fell and he became an intermittent  
8 stranger to his parents and to his friends. As Simon Shuster noted,

9 I suddenly found a stranger and a sham. On occasion I would come by his house,  
10 but it was always hard. He seemed awkward, nervous around me, as if hiding a  
11 deep shame in himself, or doing a bad, twitchy impersonation of the Sam I had  
12 known. He did reckless things, lied to me about the drugs and became completely  
unreliable.

13 (Yelena Frid made similar observations.) Maybe because all seemed so well for him, or because  
14 he hid his changed course so well, his family and friends all seemed genuinely startled by his drug  
15 addiction and descent into drug dealing.

16 Sam did finish Lowell, but found himself going to City College as other friends left for  
17 Stanford and colleges farther away. He worked to support himself. But he remained deeply into  
18 using drugs. As Sam told the Probation Officer, he used methamphetamine “like coffee.” Para.  
19 52.

20 Home life was taking a bad turn. His parents – the bedrock of most children’s development  
21 – were struggling in their relationship and, while Sam was in his late teens, separated and then  
22 divorced. Several writers opined that the pain and depression Sam felt over the disintegration of  
23 his parents’ marriage further served to spur his use and dependence on drugs. E.g., Yelena Frid.  
24 That is a too-common story, and surely played a role in Sam’s decline. As Sam’s friend Alan  
25 Khalfin poignantly wrote, “it was like watching a friend disappear even though, physically, he was  
26 still present. . . After a few months, Sam was virtually unrecognizable to me as he became  
27 completely controlled by methamphetamine and immersed in the drug lifestyle.”  
28

1 His mother, Mari Neys, in her letter to this Court summarized the accumulating events that  
2 may have overwhelmed a young man who, though his parents may have been unaware, was  
3 sinking into the drug culture:

4 As Sam was struggling with the daunting task of both working full time and taking  
5 a heavy course load at City College, my husband, Leo, and I got separated, and  
6 shortly after, divorced. This was a very difficult and overwhelming time for Sam –  
7 dealing with work, school, my divorce from his father, and out family's recent  
8 health problems, including my back injury, his grandmother's diabetes and  
9 Alzheimer's disease, and his grandfather's blood disease. Our small family had  
10 always been very closely knit, and it seemed as though it was beginning to unravel,  
11 making it hard for Sam to adjust to the recent and dramatic changes in his life.

12 His father, Leo Neys, expressed a similar opinion in his own letter to this Court.

13 The writers are consistent in two observations about Sam: first that he was a boy of  
14 promise, with a strong mind and gentle heart, and second, that since his incarceration, each has  
15 seen a striking transformation in Sam. They experienced in his letters and in their conversations  
16 and meetings, an acknowledgment that he made one bad choice after another, choices for which he  
17 is truly sorry. More importantly, many wrote that each had again seen the inquisitive young man  
18 that was lost five or so years ago and who now wants a second chance. E.g., Mari Neys, Leonid  
19 Neys, Rima Abramovich. As his friend Alan Khalfin wrote, "Sam sincerely and whole-heartedly  
20 understands that his actions were wrong and they were detrimental to himself, his family and to  
21 society."

22 Beyond their words, the very existence of these authors is a powerful argument for  
23 moderation in penalty. Sam has disappointed many who cared for him, who respected him. They  
24 see, and have reported to this Court, a re-birth and renewal in Sam that gives them great hope, that  
25 inspires them to write to this Court. They will be, in a real sense, his guardians – they want to see  
26 him succeed and will be wary of secrecy and strange, new friends in ways they were not when he  
27 was younger. They provide a supportive and corrective network that will help Sam strive toward  
28 the goals they all believe he is capable of achieving. They will be, in effect, community custodians  
of his good behavior.

1 Some, like Rabbi Katz, wrote that they have worked with Sam while he has been at FDC  
 2 Dublin and watched his behavior. Rabbi Katz noted Sam's commitment to improve not only his  
 3 own behavior but that Sam worked to teach and educate other inmates. Rabbi Katz expressly  
 4 wrote that he believed that in light of the changes and acceptance of responsibility that he saw in  
 5 Sam, this Court need not impose a lengthy sentence to deter future criminal acts. Sam "was  
 6 serious about changing his life and trying to become a better person."

7 Almost without exception, these men and women who have known Sam in good and bad  
 8 times asked this Court to exercise leniency, the Shakespearean quality-of-mercy, in deciding the  
 9 fair punishment for Sam, who has now been in custody for nearly 26 months. They begged this  
 10 Court for leniency in sentencing Sam.

## 11 **THE DECISION BEFORE THIS COURT**

12  
 13 Sam Neys comes before this Court having served more time in custody than the prison  
 14 sentence imposed by this Court on any of his codefendants, including five individuals who either  
 15 sold drugs to him or who sold drugs to one of the individuals who sold drugs to him (Calder,  
 16 Ancajima, Nguyen, Sotomayor, Tuchinsky).

17  
 18 The Sentencing Guideline range set forth in the PSR is driven in large part by the  
 19 particularly punitive sentences for methamphetamine crimes. That is, the Guideline range for Sam  
 20 Neys is so high because he was accused of selling, possessing or attempting to purchase not only  
 21 ecstasy, but methamphetamine at the several points detailed in the Indictment. Most of Sam's  
 22 heightened Guideline range is the result of his attempt to purchase methamphetamine from Mr.  
 23 Sotomayor in the spring of 2005.<sup>1</sup> By monitoring Sam's cell phone calls, the agents were in fact  
 24 able to seize the package before it got to Sam.

25  
 26 <sup>1</sup> In fact, it is apparent from the PSR calculations, para. 18, that over 85 percent of the drug  
 27 weights that are used to calculate Sam's base offense level are derived from that single attempt  
 28 by Mr. Sotomayor to sell methamphetamine to Sam Neys. That is, of the total drug weight of  
 10,272.2 kg of marijuana (the amount of ecstasy and methamphetamine were converted to  
 amounts of marijuana), 8,804 kg were attributable to this single transaction.

1 This Court has placed Mr. Sotomayor on probation and ordered him to serve 15 months in  
 2 community confinement. None of the other individuals in the Indictment who the government  
 3 agreed sold drugs to Sam, and who admitted doing so, was sentenced to more than two years in  
 4 prison. Hence, there is a compelling equity in not imposing any additional sentence on Sam Neys  
 5 beyond the 26 months he has already served in prison.

6 Counsel understands that some of these codefendants had shown good progress while out  
 7 of custody as these charges were pending. Those individuals held a steady job and/or participated  
 8 in continuing education, and stayed out of trouble. Some provided important support for other  
 9 family members.

10 Sam Neys has obviously been deprived of the opportunity to show that he appreciates the  
 11 seriousness of his misconduct and that he can live a law-abiding life. He has been in custody,  
 12 while others were free. However, Sam has made better use of his time than the facility would  
 13 allow.

14 By all appearances, Sam did all he could to improve himself while in custody. He has  
 15 participated in all of the few programs offered at FDC Dublin and created a few of his own –  
 16 including a impressive reading list of books he has read since his incarceration. He has a  
 17 certificate for participating and completing Basic Spanish Class I and for participating and  
 18 completing AA and NA meetings/classes. However, FDC Dublin would not even allow him (or  
 19 any inmate) even to take a correspondence course because the staff at FDC Dublin refused to  
 20 provide the assistance needed for any inmate to do so (e.g., supervise exams). So, on his own, he  
 21 developed a reading list to educate himself (a copy of the books he has read is attached). Exhibit  
 22 B.<sup>2</sup> Indeed, he helped out other inmates not only to read and study, but coordinated Jewish  
 23 ceremonies – like a Passover Seder – for the few Jewish inmates who were incarcerated so that  
 24 they could retain some connection to their faith.  
 25

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26  
 27 <sup>2</sup> On a recent visit, Sam told counsel that he has more recently read Of Human Bondage,  
 28 Huckleberry Finn, The Amazing Adventures of Kavalier and Clay, Madea, and The Trojan Women.

1 In a letter to counsel (and one not edited by counsel), Sam explained some of what he had  
2 learned:

3 Over the past two years, I've rediscovered my obsession with learning everything  
4 from history, calculus, the financial markets to languages, religion and spirituality.  
5 By living according to religious law, I have instilled discipline and order in my  
6 everyday decisions. I will not be depraved [sic] by mundane physical temptations  
7 the same way again. The pleasure I derive from learning, which was something I  
8 treasured in my youth, alleviates any doubt in what I can do once I dedicate myself.  
9 After my release, I plan on finishing [to attend?] a top school receiving a BA in  
10 science, biology or chemistry, and then pursuing a career in medicine as the  
11 majority of my family on my mother's side have done.

12 Further, as shown by the letters written by those who know him, he has made a major  
13 mental and emotional commitment to a different life, one not involved in drugs. See PSR, para.  
14 13. Sam is ashamed of his addiction and his behavior under the influence of the drugs that so  
15 occupied his mind and time. He feels he has betrayed his family and friends, and has removed  
16 himself from being able to assist his grandparents, who have been quite ill and infirm. Even in his  
17 intoxicated state, he cared deeply for them and tried to help when his father was not able to do so –  
18 shopping for them, taking them to medical appointments, etc.

19 Indeed, his forced separation from his paternal grandparents – Shaya and Rahel Neys – has  
20 been particularly painful. His grandparents came to the United States a few years after Sam and  
21 his parents arrived. As his parents worked long hours to support their family, Sam's grandparents  
22 were his daily companions – walking him to tennis lessons and to school, his grandfather teaching  
23 him the Torah as he readied for his Bar Mitzvah. In many ways, they raised him.

24 Now in their 80s, they are ill and infirm and have been so for some years. They live in a  
25 senior citizen community in San Francisco. When Sam's father, Leonid, moved out of the family  
26 home in South San Francisco to San Jose, it fell to Sam to go to San Francisco several times a  
27 week to keep them company, buy them groceries, take them to medical appointments, etc. While  
28 he was admittedly less conscientious in these duties in the period before his arrest, he has now been  
denied any contact with them.

Sam's parents told him that they could not bear to tell his grandparents he is in jail for these  
crimes – they feared it would literally kill them. So, they have been told that Sam is out of the area

1 studying and working, and thus have explained his absence. He is ashamed they are left alone,  
2 without his companionship and that in the final years, he can not comfort them and return the love  
3 they so often showed to him. For this he is ashamed.

4       There is no reason to disbelieve the authors of the many letters submitted to this Court.  
5 Considering their observations and Sam's own writings, it is fair to say that if Sam been free of  
6 custody over the last 26 months, he would have produced a record of accomplishment that would  
7 have equaled that of the other young, codefendants who have come before this Court.

8       Indeed, almost all of the other defendants have been free on pretrial release in this matter.  
9 Sam was unexpectedly ripped from his social fabric and friends, family contacts and the world he  
10 knew, however dysfunctional, to a world of bars and locked doors. He had to confront his drug use  
11 and misconduct all at once; the other defendants had the luxury of slowing adjusting to their lives  
12 under a federal microscope and the prospect of prison.

13       This Court can thus fairly conclude he has learned a more powerful lesson than they have.  
14 He lost his liberty as other young men and women worked, studied, learned and played. Locked  
15 behind bars, he has paid a keen price for his youthful addiction and stupidity. He blames no one  
16 but himself, but he does understand the high cost of his own actions. As he wrote to counsel in that  
17 same letter,  
18

19       My experience [in custody] has really scared me, and I now understand prison is  
20 where I can be spending the rest of my life if I don't change. For the past two years  
21 I have been living with the consequences of my actions, in a place I would never  
22 have imagined, with the feeling of regret persistently bearing down and reminding  
23 me of what I have done. My regret is not because I got caught, but over the shame  
24 for what I've done, for how warped and bizarre my concept of achievement had  
25 become. I thought a life of excessive drug consumption was some sort of an  
26 accomplishment.

27       He now knows much better.

28       Further, he has done what he can to "correct" the misconduct of his past, candidly  
admitting his own misconduct and the misdeeds about which he knew.

      In sum, like some of the other codefendants who have received either no prison sentence or  
a modest prison sentence, Sam Neys has made great progress in his understanding and life since

1 his arrest and incarceration in July 2005. As counsel believes that the government will not argue  
 2 that Sam is more culpable than those that supplied the club drugs to him (indeed he was less  
 3 culpable), then this Court should not sentence him more harshly than those individuals. Because  
 4 Sam has already served nearly 26 months in prison, no further prison time is warranted.

5 If this Court concludes that further confinement is warranted, there are ample reasons,  
 6 consistent with the factors detailed in 18 U.S.C. § 3553(a), for imposing no more than an aggregate  
 7 sentence of three (3) years (less credit for time he has already served). The Sentencing Guidelines  
 8 provide this Court with a point of departure, not a straight-jacket. United States v. Booker and  
 9 United States v. Fanfan, 543 U.S. 220, 160 L. Ed. 2d 621 (2005). His efforts at rehabilitation, his  
 10 youth, his limited prior criminal record<sup>3</sup>, his potential and promise, his acknowledgement of his  
 11 own misconduct and shame at how his acts have affected him and his family, his effort to correct  
 12 his misdeeds, all counsel for a sentence well below 63 months, the bottom of the Guideline range  
 13 calculated in the PSR.

14 While the Probation Officer “recommended” the bottom of the Guideline range in the PSR,  
 15 it is clear that she did so without considering the mitigating factors in 18 U.S.C. § 3553a and Sam’s  
 16 cooperation. From her comments, she expected those additional factors would result in a  
 17 meaningfully lower sentence than the bottom of the Guideline range. And so they should.

18  
 19  
 20 <sup>3</sup> As the PSR notes, Sam’s only prior conviction was a misdemeanor theft offense in state court.  
 21 He did not have counsel at that proceeding. Undersigned counsel examined the court’s records  
 22 and he pled guilty at his first court appearance without counsel. While his criminal history  
 23 category remains Category I even considering this conviction, the Ninth Circuit has repeatedly  
 held that a defendant’s current sentence may not be increased based on a misdemeanor  
 conviction where the defendant did not have counsel.

24 Uncounseled misdemeanor convictions may not be used to enhance the sentence  
 25 of a later conviction. Baldasar v. Illinois, 446 U.S. 222 (1980). . . . An  
 26 uncounseled misdemeanor conviction cannot be used collaterally to impose an  
 increased prison sentence upon a repeat offender because the lack of counsel  
 undermines the first conviction’s reliability.

27 United States v. Hookano, 957 F.2d 714, 716 (9th Cir. 1992). Accord United States v.  
 28 Kaneakua, 105 F.3d 463, 467 (9th Cir. 1997).

1 As an alternative to further prison, if this Court is concerned how Sam Neys will conduct  
 2 himself if he were released now directly from pretrial detention, even though he will be on  
 3 supervised release for an extended period, this Court could order that he be subject to community  
 4 confinement for a reasonable period, in addition to the 26 months he has already served in custody.  
 5 By that means, the Court could further monitor his progress.

6 If this Court orders an additional prison sentence, counsel requests that this Court  
 7 recommend that Sam Neys be allowed to participate in the residential drug treatment program. See  
 8 18 U.S.C. § 3621(b) and 28 C.F.R. § 550.56 et seq.

9 Finally, if this Court sentences Sam Neys to additional time in prison, he requests that this  
 10 Court recommend that he be housed in a facility as close to Northern California as possible, as both  
 11 his parents, grandparents and friends live in the Bay Area.

12 In the same letter quoted above to counsel, Sam wrote:

13  
 14 My parents are my main inspiration for starting this new life. At about my age  
 15 now, my parents decided to leave the life they knew in the Soviet Union, and start  
 16 over new in America. They life they left, with all its limitations, was still the only  
 17 one they had ever known. It took a lot of courage, but they were convinced [that]  
 18 with hard work and the freedom here to advance they would be successful, living a  
 better, fuller, more gratifying life. I see my future in the same way. I'm leaving my  
 old ways for a land of opportunity. I now for the first time have real goals, and with  
 all my heart know crime and all that I did before will only hinder me from reaching  
 them.

19 It does not profit Sam or this community to continue to jail him. He has learned much,  
 20 more than most courts could hope that "time in the slammer" could teach a young man. He has not  
 21 spent his time idly. He has lost some very precious time, gained some very valuable, if painful,  
 22 lessons. Now this Court must decide whether there is any meaningful gain from continuing to jail  
 23 him longer than all of his codefendants.

24 DATED: August 22, 2007

Respectfully submitted

25 /s/

26 Scott A. Sugarman  
 27 Attorney for Semyon Neys  
 28